IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

MYRNA ELIZONDO and	§	
JAVIER ELIZONDO,	§	
Plaintiffs,	§	
	§	
v.	§	**CASE NO. 7:17-cv-00179**
	§	
STATE FARM LLOYDS AND	§	
DEDRAN SIMPSON,	§	
Defendants.	§	

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

Defendant State Farm Lloyds ("State Farm") files this Notice of Removal.

PROCEDURAL BACKGROUND

1.   Plaintiffs Myrna Elizondo and Javier Elizondo filed this action on April 3, 2017 against State Farm and Dedran Simpson in the 139th Judicial District Court of Hidalgo County, Texas. That case was docketed under cause number C-1515-17-C (the "State Court Action").

2.   State Farm was served with process on April 11, 2017. Dedran Simpson was served with process on April 13, 2017.

3.   State Farm timely filed its Original Answer on April 28, 2017. Simpson timely filed her Original Answer on May 8, 2017.

4.   State Farm now timely files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 139th Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division.

NATURE OF THE SUIT

5.   This lawsuit involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiffs' claims for damages allegedly sustained as the result of a May 9, 2015 wind and/or hailstorm. *See Plaintiffs' Original Petition* at ¶¶ 11-13. Plaintiffs assert causes of action against Defendant State Farm for breach of contract, breach of duty of good faith and fair dealing, and violation of Chapters 541 & 542 of the Texas Insurance Code. *Id*. at ¶¶ 26-37.

6.   Plaintiffs assert causes of action against Dedran Simpson for violation of Chapter 541 of the Texas Insurance Code. *Id*. at ¶¶ 38-46. However, Simpson had insufficient involvement in the handling of Plaintiffs' insurance claim. Simpson was improperly joined in the State Court Action in an attempt to avoid removal.

BASIS FOR REMOVAL

7.   The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest (Plaintiffs and State Farm) and the amount in controversy exceeds $75,000, exclusive of interest and costs. The citizenship of Dedran Simpson should be disregarded because he is a sham defendant who has been improperly joined to defeat diversity jurisdiction.

Diversity of Citizenship

8.   At the time the State Court Action was commenced, Plaintiffs were and still are residents and citizens of Texas. *See Plaintiffs' Original Petition* at ¶ 2.

9.   Defendant State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyd's Plan" organized under chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at

the time this action was commenced, and still are, all citizens and residents of Illinois, thereby

making State Farm Lloyds a citizen of Illinois for diversity purposes. See *Royal Ins. Co. of Am.*

v. Quinn-L Capital Corp., 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated

association determined by citizenship of members).

10.   Defendant Dedran Simpson was and still is a resident and citizen of Texas. However,

Plaintiffs improperly joined Simpson for the purpose of defeating diversity. For this reason, the

citizenship of Simpson should not be considered in determining whether this Court has

jurisdiction under 28 U.S.C. § 1332. The citizenship of improperly joined defendants is not to be

considered in determining whether complete diversity exists. *Salazar v. Allstate Texas Lloyds*

Inc., 455 F.3d 571, 574 (5th Cir. 2006); *Smallwood v. Illinois Cent. R.R. Co.*, 385 F.3d 568, 573

(5th Cir. 2003).

Dedran Simpson Has Been Improperly Joined

11.   Fraudulent joinder is established when a plaintiff cannot establish a cause of action

against the non-diverse party in state court. *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003).

12.   Defendant Simpson has been improperly joined. Defendant Simpson had insufficient

involvement in State Farm's investigation and adjustment of Plaintiffs' claim to be considered a

proper defendant.

13.   Plaintiffs allege in their petition that Simpson "made numerous errors in estimating the

value of Plaintiffs' claim," "failed to fully quantify Plaintiffs' damages," and "knowingly and

intentionally overlooked damages at the Property." *See Plaintiffs' Original Petition* at ¶ 13.

However, Simpson was not the adjuster on Plaintiffs' claim, she did not draft or review State

Farm's estimate of damages, and she has never stepped foot on Plaintiffs' property. Instead,

Simpson appears to have been sued based on correspondence she sent to public adjuster Under Paid Claims *after* State Farm made its claim decision. Quite simply, Simpson "was not the adjuster who handled [the] claim during the time in which the alleged violations of the Insurance Code occurred." *Centro Cristiano Cosecha Final, Inc. v. Ohio Cas. Ins. Co*., 2011 U.S. Dist. LEXIS 6541, *39, 2011 WL 240335 (S.D. Tex. Jan. 20, 2011). Consequently, joinder of Simpson in this case is improper and Plaintiffs' causes of action against her should be dismissed. *See, e.g.*, *Santoy v. State Farm Lloyds*, 2014 U.S. Dist. LEXIS 113230, *12, 2014 WL 4064025 (S.D. Tex. Aug. 14, 2014) (finding adjusters improperly joined, and stating "Plaintiffs cannot stretch [the law] to cover individuals who have not dealt directly with their claim.").

14.   Simpson had insufficient involvement in the adjustment and investigation of Plaintiffs' claim. His joinder in this case is improper. The residency of Dedran Simpson should not be considered for purposes of diversity jurisdiction and Plaintiffs' claims against Dedran Simpson should be dismissed.

Amount in Controversy

15.   In their petition, Plaintiffs state they "seek monetary relief over $100,000.00 but not more than $200,000.00." As shown by Plaintiffs' Petition, the amount in controversy requirement is satisfied.

REMOVAL IS PROCEDURALLY CORRECT

16.   State Farm was served with process on April 11, 2017. Dedran Simpson was served with process on April 13, 2017.

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17.   Venue is proper in this Division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

18.   In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders in the State Court Action are attached herein to the Index of Matters Filed (Exhibits 1A – 1F).

19.   Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of State Farm's Notice of Removal was promptly given to all parties and to the clerk of the 139th Judicial District Court of Hidalgo County, Texas.

20.   All documents required by Local Rule 81 to be filed with this Notice of Removal are attached herein to the Index of Matters Filed (Exhibit 1).

PRAYER

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm Lloyds also requests any additional relief to which it may be justly entitled.

Respectfully submitted,

 /s/ *Charles W. Downing*
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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of this document was served on all counsel of record on the 8th day of May, 2017, as indicated below:

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